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SERVICE DATE - LATE RELEASE SEPTEMBER 30, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB DOCKET NO. ISM 35006

PROTESTS AND PETITIONS FOR SUSPENSION AND INVESTIGATION
OF GENERAL RATE INCREASES PROPOSED BY EC-MAC MOTOR
CARRIERS SERVICE ASSOCIATION, INC., MIDDLEWEST MOTOR
FREIGHT BUREAU, INC., NORTH AMERICAN TRANSPORTATION
COUNCIL, INC., AND ROCKY MOUNTAIN TARIFF BUREAU, INC.

Decided: September 30, 1999

The National Small Shipments Traffic Conference, Inc. (NASSTRAC) and The Health and Personal Care Distribution Conference, Inc. (H&PCDC) (collectively, the Shipper Conferences) jointly filed protests and petitions for suspension and investigation of general rate increases (GRIs) proposed by four motor carrier rate bureaus,¹ as follows:

Motor Carrier Rate Bureau

EC-MAC Motor Carriers Service Association, Inc.
Middlewest Motor Freight Bureau, Inc.
North American Transportation Council, Inc.²
Rocky Mountain Tariff Bureau, Inc.

GRI Effective Date

October 1, 1999
October 1, 1999
October 4, 1999
October 1, 1999

The rate bureaus filed replies to the protests and requests for suspension and investigation.

The Shipper Conferences contend that the collective ratemaking actions are unreasonable and unlawful, that the proposed GRIs far exceed cost increases, and that the Board should exercise its authority under 49 U.S.C. 13703(a)(5) to suspend and investigate them before they take effect. The Shipper Conferences further contend that, despite the requirement of 49 U.S.C. 13703(g)(1)(A) that rate bureaus publish their rate actions (including general rate increases), information about the current round of GRIs has been difficult to obtain.³ Finally, the Shipper Conferences allege that the

¹ Section 13703(a)(1)(G) of the ICC Termination Act of 1995 (ICCTA) permits motor carriers to collectively establish “rate adjustments of general application based on industry average carrier costs (so long as there is no discussion of individual markets or particular single-line rates).”

² Formerly Niagara Frontier Tariff Bureau.

³ 49 U.S.C. 13703(g)(1)(A) provides that “[r]outes, rates, classifications, mileage guides, and rules established under agreements approved under this section shall be published and made

(continued...)

proposed GRIs contravene the Board's decision served on December 18, 1998, in Sec. 5a Application No. 118 (Amendment No. 1), et al., EC-MAC Motor Carriers Service Association, Inc., Et Al. (December 18 decision), in which the Board approved motor carrier rate bureau agreements for a one year period but indicated that, absent a clear expression from Congress to the contrary, any bureau seeking continued antitrust immunity after that period would be required to reduce its collectively set class rates to market levels.

The Shipper Conferences state that they are not protesting the GRIs of two other rate bureaus, Southern Motor Carriers Rate Conference, Inc. (SMC), and Pacific Inland Tariff Bureau, Inc. (PTB), because, along with their proposed GRIs, these rate bureaus are also proposing discounts of 20 and 35 percent, respectively, for all shippers who do not have any other discount arrangement.⁴ The protested GRIs do not have any similar discount arrangements, however, and the Shipper Conferences contend that the already-too-high rates will rise even further above market-based levels and will result in many shippers paying rates far in excess of reasonable levels as set by competition.

The Shipper Conferences assert that the statute clearly provides that GRIs are not to be used for any purpose other than to establish "rate adjustments of general application based on industry average carrier costs." In this regard, they note that the Board's December 18 decision describes GRIs that exceed inflation as "presumptively adverse to the public interest." Noting that the proposed GRIs range from 4.9 to 5.5 percent, the Shipper Conferences state that the proposed ranges are unreasonable and excessive when compared to the 2.9 percent Bureau of Labor Statistics, Producer Price Index for Motor Freight Transportation and Warehousing from August 1998 to August 1999, as well as the 3.57 percent Carrier Cost Index (CCI) developed by SMC (and included in the protests). The Shipper Conferences further assert that the unreasonableness of the GRIs is compounded by the fact that many carriers are currently recovering increased fuel costs through fuel surcharges in individual tariffs and contracts. To the extent that increased fuel costs are used to justify part of the proposed increase, the Shipper Conferences contend that many carriers will be recovering twice for the same fuel cost increase.

The Shipper Conferences argue that with little or no information provided by the rate bureaus about the basis for the protested GRIs, which appear on their face to be designed to exacerbate the problems identified in the Board's December 18 decision, it is only through an investigation by the Board that shippers will be able to examine and question them. While they indicate that they understand that the Board has not yet instituted its follow-up proceeding to consider ways of making class rates more consistent with prevailing rates in the marketplace, the Shipper Conferences argue that the Board's general policy determinations (which they support) are

³(...continued)
available for public inspection upon request."

⁴ Thus, in the Shipper Conferences' view, these bureaus have at least made some attempt to address the concerns of the Board and shippers.

set forth in detail in the December 18 decision. Suspension of the protested GRIs is warranted, according to the Shipper Conferences, because it is difficult to conceive of any basis for approving them.

In their reply to protests, the rate bureaus contend, inter alia, that the Shipper Conferences do not attempt to address the substance of any of the GRIs individually but base their protest solely on the Board's December 18 decision; that the proposed GRIs are similar or identical to independently established increases announced by major motor carriers that do not participate in any rate bureau; that the need for motor carrier rate increases is clear from even a cursory review of the industry's financial circumstances; that the Board did not make any rate reasonableness findings in its December 18 decision; and that, if there is to be a proceeding to address the level of undiscounted collective class rates and the basis on which general rate adjustments are taken by rate bureaus, an industry-wide proceeding will be a more appropriate forum than a protest proceeding which involves only certain rate bureaus and which must necessarily be handled expeditiously. The rate bureaus state that undiscounted collective class rates have not been modified in the manner contemplated in the Board's December 18 decision and that such modification could occur only in the event that (1) Congress were not to instruct the Board with respect to the issues involved, (2) the Board were to deny the pending petitions for reconsideration of the December 18 decision, and (3) the Board were to initiate and complete a new rate review/restructuring proceeding in which an appropriate standard was determined. None of these pre-conditions has yet been satisfied, say the rate bureaus, which underscores their contention that the Shipper Conferences are asking the Board to implement its December 18 decision at a time when it is not even clear that the decision, by its own terms, will ever become effective.

With regard to public notice of their collective ratemaking actions, the rate bureaus contend that they have fully complied with (or exceeded) the requirements of the statute and the conditions contained in or applicable to their approved collective ratemaking agreements. They state that the Shipper Conferences had the option to express interest and obtain relevant information regarding the rate bureau proceedings in which the protested GRIs were adopted and that they could have participated in those proceedings had they elected to do so.

DISCUSSION AND CONCLUSIONS

Upon careful review of the protests and replies, we have determined to suspend and investigate the proposed GRIs of the four rate bureaus. While the rate bureaus contend that the increases reflect increased costs, they do not provide quantifiable evidence to support their contentions.⁵

⁵ The rate bureaus state that increased fuel costs do not constitute part of the justification for the proposed GRIs.

We stress that our action does not reflect a view that motor carrier costs have not increased or that particular motor carriers do not need additional revenues. Rather, it reflects our concern about the reasonableness of the proposed GRIs and the resulting undiscounted class rates. Motor carriers have a variety of options to increase their revenues, most of which are not subject to our rate reasonableness jurisdiction. When, however, they choose to act collectively, the provisions of 49 U.S.C. 13701(a) impose a specific obligation on the Board to ensure that collectively determined rates (i.e., the undiscounted rate bureau class rates) are reasonable. In our December 18 decision, we expressed serious concerns about the collective ratemaking process, and indeed we found that approval of the agreements under consideration would contravene the public interest unless “benchmark” rates — the class rates that are the subjects of the GRI process — were reduced to reflect actually charged rates that the carriers say are generally moving the traffic. The rate bureaus have filed petitions for reconsideration of that decision — which we will address once the current session of Congress has ended — but the bureaus whose GRIs are under challenge have done nothing to address the disparity between their class rates and the market-based rates that they say they typically charge.

It is Ordered:

1. The general rate increases proposed by EC-MAC Motor Carriers Service Association, Inc., Middlewest Motor Freight Bureau, Inc., and Rocky Mountain Tariff Bureau, Inc., effective October 1, 1999, and the general rate increase proposed by North American Transportation Council, Inc., effective October 4, 1999, are suspended and their use deferred until further order of the Board.
2. An investigation into all issues relating to the lawfulness of the suspended provisions is instituted, and the affected provisions must remain unchanged until this proceeding has been concluded.
3. EC-MAC Motor Carriers Service Association, Inc., Middlewest Motor Freight Bureau, Inc., North American Transportation Council, Inc., and Rocky Mountain Tariff Bureau, Inc., are made respondents to this proceeding.
4. Respondents are hereby directed to promptly notify affected parties of this decision for suspension.
5. Petitions for reconsideration of this decision may be filed by any interested person within 20 days after the date of service, pursuant to 49 CFR 1132.2(a).

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary